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ALEXANDER L. STEVAS,
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No. 82-379

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

COASTAL PETROLEUM COMPANY,
Petitioner,

v.

MOBIL OIL CORPORATION,
THE FLORIDA DEPARTMENT OF NATURAL RESOURCES, and
THE BOARD OF TRUSTEES OF THE
FLORIDA INTERNAL IMPROVEMENT TRUST FUND,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER COASTAL PETROLEUM COMPANY

Of Counsel:

JOSEPH C. JACOBS
ERVIN, VARN, JACOBS, ODOM and KITCHEN
Post Office Box 1170
Tallahassee, FL 32302

and

C. DEAN REASONER
Reasoner, Davis & Vinson
800-17th Street, N.W.
Washington, D.C. 20006

KENNETH C. BASS, III
FRED M. VINSON, JR.
REASONER, DAVIS & VINSON
800-17th Street, N.W.
Washington D.C. 20006

(202) 298-8100

ROBERT J. ANGERER
Law Offices of
Robert J. Angerer
Post Office Box 10468
Tallahassee, FL 32302

Counsel for Coastal Petroleum Co.

October 27, 1982

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Respondent Mobil Oil Corporation argues that the decision below is correct under this Court's opinion in *Oregon* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977). Petitioner submits that the argument misconstrues the *Corvallis* decision.

The Court held in *Corvallis* that the title to land underlying a navigable river in Oregon should be determined under principles of state, not federal, law. The Court specifically overruled its prior decision in *Bonelli Cattle Co.* v. *Arizona*, 414 U.S. 313 (1973), which had held that federal common law would govern subsequent title issues arising on lands received by a state under the equal footing doctrine. Neither *Corvallis* nor *Bonelli* presented an issue of federal jurisdiction. Both

cases dealt with substantive issues of property law, not the jurisdictional issue presented in this case.

Petitioner acknowledges that under *Corvallis* Florida real property law must be applied to decide the title issue raised by Mobil's claim. Both courts below held, however, that under Florida law the federal test of navigability must be applied to determine the nature of Florida's title to the lands involved in this aspect of the litigation and the rights of the parties in that land. While Mobil argued below that the state test of navigability should be applied, neither court accepted that argument. App. at 2a, 13a. The Court of Appeals specifically recognized that under Florida law there was a significant distinction between lands acquired by the State under the equal footing doctrine and lands acquired under the Swamp and Overflow Lands Grant Act. That court further acknowledged that in this case the distinction rested on the navigability—under federal law—of the Peace River in 1845. App. at 13a.

Both courts below followed *Corvallis* and applied Florida substantive law to decide the title dispute. Both courts held that under Florida law the decision on the title issue could turn on a determination of navigability under federal law. The two courts disagreed, however, on the significance of the fact that Florida law incorporated federal law as a determinative element. The correct resolution of that difference of opinion on the jurisdictional issue is not controlled by *Corvallis*. The *Corvallis* opinion does not decide whether a state can adopt federal law to decide property issues, nor does it decide whether a state law claim which so incorporates federal law is a claim "arising under" federal law for purposes of federal jurisdiction. This case thus raises a jurisdictional issue not presented or decided in *Corvallis*.

Mobil here attempts, in effect, to use *Corvallis* as an argument to overrule *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921). That argument misconstrues the nature of the issue in this case. Mobil argues that Coastal asserts a "rule allowing removal of every real property dispute that collaterally involved an ancient transfer of title from the United States. . . . " Brief in Opp. at 7. The petition does not assert any

such theory. It is not the federal source of Florida's title which gives rise to federal jurisdiction in this case but the fact that under Florida law a significant issue must be decided on the basis of the federal test of navigability. *Smith* remains the valid controlling case which supports federal jurisdiction where resolution of a state law cause of action depends on resolution of a federal law issue. *Corvallis* does not preclude application of the *Smith* rule to jurisdictional issues in real property cases. *Corvallis* states a rule of substantive law; *Smith* states a rule of federal jurisdiction. The two cases are compatible. The two decisions control separate aspects of this litigation. Mobil's attempt to blunt the fact that the Court of Appeals followed the dissent in *Smith* by trying to divert the analysis to *Corvallis* is not well founded.

CONCLUSION

For the reasons set out in the Petition and this Reply Memorandum, certiorari should be granted and the decision below reversed on the authority of *Smith*.

Respectfully submitted,

Of Counsel:

JOSEPH C. JACOBS
ERVIN, VARN, JACOBS, ODOM and KITCHEN
Post Office Box 1170
Tallahassee, FL 32302

and

C. DEAN REASONER
Reasoner, Davis & Vinson
800-17th Street, N.W.
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ROBERT J. ANGERER
Law Offices of
Robert J. Angerer
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Tallahassee, FL 32302
Counsel for Coastal Petroleum Co.